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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 583

RAY HOPTOWIT, JOHN DOE AND RICHARD ROE,
Petitioners,

v.

SEUFERT BROS. COMPANY, A CORPORATION,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

To the Honorable Fred M. Vinson, Chief Justice, and to the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully represent:

Jurisdiction

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended, being Sections 344 (a) and (b) of the United States Code Annotated. See *Erie R. Co.* v. *Hamilton, etc.*, 248 U. S. 369, 39 S. Ct. 95, 63 L. Ed. 307.

The judgment of the Supreme Court of the State of Oregon was filed and entered on November 14, 1951. The

time for seeking certiorari begins to run from the day the said judgment was entered. This petition is filed within three months after the entry of the judgment as required by Section 2101 of Title 28 of the United States Code Annotated.

Summary Statement of the Matter Involved

This is a suit in equity brought in the Circuit Court of the State of Oregon, Wasco County, Oregon, by Seufert Bros. Company, a corporation, respondents herein, to enjoin Ray Hoptowit, one of the petitioners herein, from crossing and re-crossing lands owned by respondents immediately adjacent to fishing locations of the Yakima Tribe of Indians for the purpose of buying and selling fish commercially.

The material defenses raised by the petitioner, Ray Hoptowit, in his Answer (R. 7) were that he is a member of the Yakima Tribe of Indians and entitled to all of the rights and privileges of members of the Yakima Tribe of Indians as guaranteed by the Yakima Treaty of June 9, 1855 (12 Stat. 951). (R. 12). Quoting from paragraph C of his Answer (R. 9):

> "That under the aforesaid provisions of said treaty of June 9, 1855 there was reserved to the Yakima Tribe of Indians and to its members in perpetuity a right to take fish at all usual and accustomed places and in addition thereto an easement to enter upon lands adjacent to these usual and accustomed places for the purpose of taking fish, bartering for, trading, buying and selling fish at said usual and accustomed places and an easement to cross said lands for the purpose of leaving said usual and accustomed places and in further addition thereto, an easement upon said fishing locations to fish at said usual and accustomed places without encroachment or interference in their activities by any agency or person exclusive of members of the Yakima Tribe of Indians."

The pertinent provisions of the Yakima Treaty of June 9, 1855 are contained in Article 3 thereof, as follows:

> "The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

The Seufert Bros. Company, the plaintiff in the trial court, contended that under the Yakima treaty of June 9, 1855 the sole right guaranteed to members of the Yakima Tribe was the right to fish and such rights as might be attendant to the right to fish, but when members of the Tribe entered the field of commerce, became fish buyers, this right was not in existence at the time the treaty was made and cannot be impliedly written into the treaty. In other words, that where the treaty was silent and did not specifically list this right it cannot be inferred from the language of the treaty (R. 22).

The contention of the defendant (R. 23-28) was that the circumstances leading up to, surrounding and following the Yakima Treaty of June 9, 1855, definitely controlled the interpretation to be made by the court of the provisions of the Yakima treaty; that the treaty must be interpreted liberally and in line with the following decisions of this court where this identical treaty was construed:

United States v. *Winans*, 198 U. S. 371; 49 L. Ed. 1089;
Seufert Bros. Company v. *United States*, 249 U. S. 194; 63 L. Ed. 555;
Tulee v. *State of Washington*, 315 U. S. 681; 86 L. Ed. 1115.

A stipulation was entered into between the parties during the trial of the case (R. 30-45) containing admissions that the lands adjacent to the fishing locations of the Yakima Tribe in the Columbia River were owned by the Seufert Bros. Company; that these lands were crossed by the defendant, Ray Hoptowit, a member of the Yakima Tribe of Indians, without the permission of the plaintiff, for the purpose of buying and selling fish commercially taken at the usual and accustomed fishing places of the Yakima Tribe.

The stipulation also provided for the admission in evidence as defendant's Exhibit No. 1 (R. 80) a certified photostatic copy of the Record of the Official Proceedings at the Council held at Walla-Walla Valley between Governor Isaac I. Stevens and other agents of the United States and Chiefs and Headmen of the Yakima, Umatilla and other tribes of Indians leading up to the Yakima Treaty of June 9, 1855 (12 Stat. 951) from May 22, 1855 to June 11, 1855, duly certified by Solon J. Buck, Archivist of the United States on May 4, 1948. It was also stipulated that the court could take judicial notice of certain excerpts from standard historical works and public documents based upon reliable source material, setting forth the historical background of the barter and trade of the Indian inhabitants of the Columbia Basin before, at the time of, and following the Yakima Treaty of June 9, 1855 (R. 35-45).

The trial court took judicial notice of these excerpts (R. 37) from historical works and public documents and gave considerable weight to them in arriving at its decision (R. 59).

The trial or the Circuit Court of the State of Oregon, Wasco County, Oregon on September 18, 1950 entered its Opinion on the Merits (R. 52) ordering that plaintiff's complaint be dismissed, liberally interpreting the Yakima Treaty. The Court, after reviewing at length the circum-

stances leading up to, and following the treaty, concluded that the Yakima Tribe had used the fish caught at its usual and accustomed fishing places in barter and trade since time immemorial and that this right was incident to and part of the fishing rights guaranteed to the Yakima Tribe by the treaty of June 9, 1855. The Court stated (R. 61):

> "The evidence is conclusive that prior to the making of the treaty, and at all times since, the Indians have been in the habit of using their catch in commerce. Considering the vast numbers of fish caught and their great weight, of course it would be absurd to think or say that any one Indian would be required to catch only a sufficient amount of fish for his own consumption. Obviously, the tribe used the take in barter and trade, probably from time immemorial. Undoubtedly, as brought out in some of these excerpts, fish were traded by these Indians for the produce of other tribes, which produce was brought from great distances; and it is entirely probable that a dozen Indians might catch enough fish for the consumption of the entire tribe for a year, and a great number of Indians fishing would require that the take be sold, or wasted. Hence it follows from the customs of the tribes and from the manner in which the take was disposed of, that the Indians have always used the fish commercially."

An appeal was taken by Seufert Bros. Company to the Supreme Court of the State of Oregon (R. 13) which reversed the decree of the trial court, entering judgment accordingly on November 14, 1951 (R. 71) and remanded and reversed the decree of the lower court, (R. 72), basing its conclusion upon a narrow interpretation of the Yakima treaty, holding that the right of trade and barter was limited to members of the Yakima Tribe who actually caught fish at the usual and accustomed places of the Yakima Tribe (R. 65, 70).

For the reasons that a federal question is involved decisive of this cause and further because the applicable deci-

sions of this Court are not in accord with this decision of the Supreme Court of the State of Oregon, petitioner now makes application for this writ.

Opinions Below

The Circuit Court of the State of Oregon, Wasco County, Oregon, entered its Opinion on the Merits which is found in the record at page 52. The opinion of the Supreme Court of the State of Oregon is not yet reported but is found in the record at page 63.

Questions Presented and Specifications of Errors to Be Urged

Under the Yakima Treaty of June 9, 1855 (12 Stat. 951), and in particular Article 3 thereof (Appendix p. 13), was there reserved to the Yakima Tribe and its members the right of ingress and egress upon and across lands in private ownership adjacent to the usual and accustomed fishing places of the Yakima Tribe for the purpose of buying and selling fish commercially caught at the usual and accustomed fishing places?

The Yakima Tribe and its members, under the Yakima Treaty of June 9, 1855 (12 Stat. 951), have the right of ingress and egress upon lands adjacent to their usual and accustomed fishing places for the purpose of bartering for, trading, buying and selling fish taken at said places.

The Supreme Court of the State of Oregon erred in construing the Yakima Treaty in the very narrowest terms and in denying the Yakima Tribe and its members this right.

Reasons Relied On for the Allowance of the Writ

1. This decision of the Supreme Court of the State of Oregon, reached entirely by its construction of the Yakima Treaty of June 9, 1855 (12 Stat. 951), which was decisive

of the case, is not in accord with the decisions of this Court in the following cases:

United States v. *Winans,* 198 U. S. 371; 49 L. Ed. 1089;
Seufert Bros. Company v. *United States,* 249 U. S. 194; 63 L. Ed. 555;
Tulee v. *State of Washington,* 315 U. S. 681; 86 L. Ed. 1115.

In the *Winans* case this Court interpreted the Yakima Treaty of June 9, 1855, as not only granting members of the Yakima Tribe a preferred right to fish at the usual and accustomed places in the Columbia River but also a right of ingress and egress upon and across lands in private ownership immediately adjacent to the fishing locations. This Court stated (49 L. Ed. at page 1094):

> " 'And we have said we will construe a treaty with the Indians as "that unlettered people" understood it, and "as justice and reason demand, in all cases where power is exerted by the strong over those to whom they owe care and protection," and counterpoise and inequality "by the superior justice which looks only to the substance of the right, without regard to technical rules." (Choctaw Nation v. United States) 119 U. S. 1, 30 L. Ed. 306, 7 Sup. Ct. Rep. 75; Jones v. Meehan, 175 U. S. 1, 44 L. Ed. 49, 20 Sup. Ct. Rep. 1. How the treaty in question was understood may be gathered from the circumstances.
>
> The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them,—a reservation of those not

granted. And the form of the instrument and its language was adapted to that purpose. Reservations were not of particular parcels of land, and could not be expressed in deeds, as dealings between private individuals. The reservations were in large areas of territory, and the negotiations were with the tribe. They reserved rights, however, to every individual Indian, as though named therein. They imposed a servitude upon every piece of land as though described therein . . . "

In the Seufert Bros. case this Court held that the Yakima Indians under their treaty had the right to fish on the north as well as the south shore of the river and across lands adjacent to locations on either side of the river. At the outset of its opinion this Court stated (63 L. Ed. 557):

> "The appeal requires the construction of the language quoted . . . (the right of taking fish at all usual and accustomed places) . . . and the circumstances incident to the making of the treaty are important."

The the evidence found by the lower court, as to the habits and customs of the Indians at the time of the treaty was received, and this Court said at page 558 of 63 L. Ed:

> "The district court found, on what was sufficient evidence, that the Indians living on each side of the river, ever since the treaty was negotiated, had been accustomed to cross to the other side to fish. . . . The record also shows . . . that the Yakima Indians were accustomed to resort habitually to the locations described in the decree for the purposes of fishing at the time the treaty was entered into, and that they continued to do so to the time of the taking of the evidence in the case. . . .
>
> How the Indians understood this proviso we are considering cannot be doubtful. During all the years since the treaty was signed they have been accustomed habitually to resort for fishing to the places to which the decree of the lower court applies . . . This shows clearly that their understanding of the treaty was that

they had the right to resort to these fishing grounds . . . and this is the extent of the right that is secured to them by the decree we are asked to revise. . . .

To restrain the Yakima Indians to fishing on the north side and shore of the river would greatly restrict the comprehensive language of the treaty . . . and would substitute for the natural meaning of the expression used—for the meaning which it is proved the Indians, for more than fifty years derived from it—the artificial meaning which might be given to it by the law and by lawyers."

In the *Tulee* case this Court held that the exaction of license fees by the State of Washington as a prerequisite to the enjoyment of fishing in the "usual and accustomed places" could not be reconciled with a fair construction of the Yakima Treaty. This Court in reviewing the almost identical evidence which is now before this Court, in particular, the minutes and proceedings and negotiations preceding the signing of the Yakima Treaty of June 9, 1855 (R. 80), at page 1120, 86 L. Ed. stated:

"In determining the scope of the reserved rights of hunting and fishing, we must not give the treaty the narrowest construction it will bear. In United States v. Winans, 198 U. S. 371, 49 L. Ed. 1089, 25 S. Ct. 662, this Court held that, despite the phrase "in common with citizens of the territory," Article 3 conferred upon the Yakimas continuing rights, beyond those which other citizens may enjoy, to fish at their "usual and accustomed places" in the ceded area; and in Seufert Bros. Co. v. United States, 249 U. S. 194, 63 L. Ed. 555, 39 S. Ct. 203, a similar conclusion was reached even with respect to places outside the ceded area. From the report set out in the record before us of the proceedings in the long council at which the treaty agreement was reached, we are impressed by the strong desire the Indians had to retain the right to hunt and fish in accordance with the immemorial customs of their tribes. It is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance

with the meaning they were understood to have by the tribal representatives at the council and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people. United States v. Kagama, 118 U. S. 375, 384; 30 L. Ed. 228, 231, 6 S. Ct. 1109; Seufert Bros. Co. v. United States, supra (249 U. S. 198, 199, 63 L. Ed. 558, 559, 39 S. Ct. 203.)"

This Court has always liberally interpreted the provisions of Indian treaties, giving special consideration to the circumstances surrounding each treaty under the rule announced in the case of *Alaska Pacific Fisheries* v. *United States,* 39 S. Ct. 40, 248 U. S. 78, 63 L. Ed. 138. Also see: *Moore* v. *United States* (C. C. A. 9th), 157 F. 2d 760. The Supreme Court of the State of Oregon in the instant case has disregarded entirely the circumstances leading up to and following the Yakima Treaty of June 9, 1855, and has interpreted the Yakima Treaty in its narrowest terms.

2. The Supreme Court of the State of Oregon in arriving at its decision gave the Yakima Treaty of June 9, 1855 the very narrowest construction and overlooked the controlling principle of law announced by this Court in the *Winans* case, that the Yakima Treaty "was not a grant of rights to the Indians but a grant of rights from them—a reservation of those not granted" (49 L. Ed. 1092).

3. The Supreme Court of the State of Oregon has denied a member of the Yakima Tribe the right to buy and sell fish commercially caught by members of the Yakima Tribe at the usual and accustomed fishing places of the tribe, which is incidental to his fishing right at these locations as guaranteed by Article 3 of the Treaty of June 9, 1855. The Supreme Court of the State of Oregon has entirely overlooked the evidence of fishing activities of members of the Yakima Tribe before, at the time of, and after the treaty of June 9, 1855 as contained in excerpts from historical writings and public documents appearing in the record to

establish that from time immemorial these Indians have been in the habit of using their catch in commerce. The Supreme Court of the State of Oregon completely ignored the findings of the lower court in this respect (R. 69).

4. The Supreme Court of the State of Oregon has failed to consider the intent of the contracting parties to the Yakima treaty as clearly stated in the minutes taken at the Council Grounds preliminary to the execution of the Yakima treaty of June 9, 1855, to the effect that the Yakima Indians should be forever allowed to take salmon from the Columbia River without any restriction whatsoever save the rights of the sovereign to regulate in the interests of conservation.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari issue under the seal of this Court directed to the Supreme Court of the State of Oregon commanding the said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Supreme Court of the State of Oregon in the case numbered and entitled on its docket Seufert Bros. Company, a corporation, Appellant *vs.* Ray Hoptowit, John Doe and Richard Roe, Respondents, to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States; that the judgment herein of the said Supreme Court of the State of Oregon be reversed and that the decision of the Circuit Court of the State of Oregon, Wasco County, Oregon, in said cause, be affirmed; and for such other and further relief as this Court may deem proper.

Dated this 3rd day of January, 1952.

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APPENDIX

TREATY WITH THE YAKIMA, 1855

June 9, 1855 (12 Stat. 951. Ratified Mar. 8, 1859. Proclaimed Apr. 18, 1859.)

Articles of agreement and convention made and concluded at the treaty-ground, Camp Stevens, Walla-Walla Valley, this ninth day of June in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian Affairs for the Territory of Washington, on the part of the United States, and the undersigned head chiefs, chiefs, head-men, and delegates of the Yakama, Palouse, Pisquouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Ochechotes, Kah-milt-pah, and Se-ap-cat, confederated tribes and bands of Indians, occupying lands hereinafter bounded and described and lying in Washington Territory, who for the purposes of this treaty are to be considered as one nation under the name of "Yakama," with Kamaiakun as its head chief, on behalf of and acting for said tribes and bands, and being duly authorized thereto by them.

Article 1. The aforesaid confederated tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied and claimed by them, and bounded and described as follows, to-wit:

Commencing at Mount Rainier, thence northerly along the main ridge of the Cascade Mountains to the point where the northern tributaries of Lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes, (119° 10′,), which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians; thence in a true south course to the forty-seventh (47°) parallel of latitude; thence east on said

parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes; thence down the Palouse River to its junction with the Moh-hah-ne-she, or southern tributary of the same; thence in a southeasterly direction, to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Perce tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White Banks" below the Priest's Rapids; thence westerly to a lake called "La Lac", thence southerly to a point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the western extremity of the "Big Island", between the mouths of the Umatilla River and Butler Creek; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning.

Article 2. There is, however, reserved from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries; to-wit: Commencing on the Yakima River, at the mouth of the Attah-nam River; thence westerly along the said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence, southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickatat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning.

All which tract shall be set apart and, so far as necessary, surveyed and marked out, for the exclusive use and benefit

of said confederated tribes and bands of Indians, as an Indian reservation; nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent. And the said confederated tribes and bands agree to remove to, and settle upon, the same, within one year after the ratification of this treaty. In the mean time it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States; and upon any ground claimed or occupied, if with the permission of the owner or claimant.

Guaranteeing, however, the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named.

And provided, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated, and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued, under the direction of the President of the United States, and payment made therefor in money; or improvements of an equal value made for said Indian upon the reservation. And no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money, or improvements, of an equal value shall be furnished him as aforesaid.

Article 3. And provided, That, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways.

The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and

berries, and pasturing their horses and cattle upon open and unclaimed land.

Article 4. In consideration of the above cession, the United States agrees to pay to the said confederated tribes and bands of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty, the sum of two hundred thousand dollars, in the following manner, that is to say: Sixty thousand dollars, to be expended under the direction of the President of the United States, the first year after the ratification of this treaty in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, supplying them with provisions and a suitable outfit, and for such other objects as he may deem necessary, and the remainder in annuities, as follows: For the first five years after the ratification of the treaty, ten thousand dollars each year, commencing September first, 1856; for the next five years, eight thousand dollars each year; for the next five years, six thousand dollars per year, and for the next five years, four thousand dollars per year.

All which sums of money shall be applied to the use and benefit of said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them. And the superintendent of Indian Affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.

Article 5. The United States further agrees to establish at suitable points within said reservation, within one year after the ratification hereof, two schools, erecting the necessary buildings, keeping them in repair, and providing them with furniture, books, and stationery, one of which shall be an agricultural and industrial school, to be located at the agency, and to be free to the children of the said confederated tribes and bands of Indians, and to employ one superintendent of teaching and two teachers; to build two blacksmiths' shops, to one of which shall be attached a tinshop, and to the other a gunsmith's shop; one carpenter's shop, one wagon and plough maker's shop, and to keep the same in repair and furnished with the necessary tools; to employ one superintendent of farming and two farmers, two

blacksmiths, one tinner, one gunsmith, one carpenter, one wagon and plough maker, for the instruction of the Indians in trades and to assist them in the same; to erect one sawmill and one flouring-mill keeping the same in repair and furnished with the necessary tools and fixtures; to erect a hospital, keeping the same in repair and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provided with the necessary furniture, the building required for the accommodation of the said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.

And in view of the fact that the head chief of the said confederated tribes and bands of Indians is expected, and will be called upon to perform many services of a public character, occupying much of his time, the United States further agree to pay to the said confederated tribes and bands of Indians five hundred dollars per year, for the term of twenty years after the ratification hereof, as a salary for such person as the said confederated tribes and bands of Indians may select to be their head chief, to build for him at a suitable point on the reservation a comfortable house, and properly furnish the same, and to plough and fence ten acres of land. The said salary to be paid to, and the said house to be occupied by, such head chief so long as he may continue to hold that office.

And it is distinctly understood and agreed that at the time of the conclusion of this treaty Kamaiakun is the duly elected and authorized head chief of the confederated tribes and bands aforesaid, styled the Yakima Nation, and is recognized as such by them and by the commissioners on the part of the United States holding this treaty; and all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said confederated tribes and bands of Indians. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

Article 6. The President may, from time to time, at his discretion, cause the whole or such portions of such reserva-

tion as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes and bands of Indians as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.

Article 7. The annuities of the aforesaid confederated tribles and bands of Indians shall not be taken to pay the debts of individuals.

Article 8. The aforesaid confederated tribes and bands of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens.

And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of the annuities.

Nor will they make war upon any other tribe, except in self-defence, but will submit all matters of difference between them and other Indians to the Government of the United States or its agents for decision, and abide thereby. And if any of the said Indians commit depredations on any other Indians within the Territory of Washington or Oregon, the same rule shall prevail as that provided in this article in case of depredations against citizens. And the said confederated tribes and bands of Indians agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

Article 9. The said confederated tribes and bands of Indians desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same, and, therefore, it is provided that any Indian belonging to said confederated tribes and bands of Indians, who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her annuities withheld from him or her for such time as the President may determine.

Article 10. And Provided, That there is also reserved and set apart from the lands ceded by this treaty, for the

use and benefit of the aforesaid confederated tribes and bands, a tract of land not exceeding in quantity one township of six miles square, situated at the forks of the Pisquouse or Wenatshapam River, and known as the "Wenatshapam Fishery", which said reservation shall be surveyed and marked out whenever the President may direct, and be subject to the same provisions and restrictions as other Indian reservations.

Article 11. This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian Affairs for the Territory of Washington, and the undersigned head chief, chiefs, headmen and delegates of the aforesaid confederated tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS,
Governor and Superintendent (L.S.).

Kamaiakun, his x mark. (L.S.)
Skloom, his x mark. (L.S.)
Owhi, his x mark. (L.S.)
Te-cole-kun, his x mark. (L.S.)
La-hoom, his x mark. (L.S.)
Me-ni-nock, his x mark. (L.S.)
Elit Palmer, his x mark. (L.S.)
Wish-och-kmpits, his x mark. (L.S.)
Koo-lat-toose, his x mark. (L.S.)
Shee-ah-cotte, his x mark. (L.S.)
Tuck-quille, his x mark. (L.S.)
Ka-loo-as, his x mark. (L.S.)
Scha-noo-a, his x mark. (L.S.)
Sla-kish, his x mark. (L.S.)

Signed and sealed in the presence of James Doty, secretary of treaties; Mic. Cles, Pandosy, O.M.T.; Wm. C. McKay; W. H. Tappan, sub Indian agent, W.T.; C. Chirouse, O.M.T.; Patrick McKenzie, interpreter; A. D. Pamburn, interpreter; Joel Palmer, superintendent Indian affairs O.T.; W. D. Biglow; A. D. Pamburn, interpreter.